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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6699
DATE COMPLAINT FILED: 11/26/12
DATE OF NOTIFICATION: 11/30/12
DATE OF LAST RESPONSE: 1/17/13
~~DATE ACTIVATED: 9/17/13~~

EPS:
ELECTION CYCLE: 2012
EXPIRATION OF SOL: 9/11/2017

COMPLAINANT:

Sheryl Wooley, on behalf of Friends of Chauncey Goss

RESPONDENT:

Friends of Trey Radel, Inc., and Barbara Bisnette in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 438(a)(4)
11 C.F.R. § 104.15

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves an allegation that the principal campaign committee of Congressional candidate Trey Radel, Friends of Trey Radel, Inc. (the "Committee"), violated the Federal Election Campaign Act, as amended (the "Act"), by using contributor information obtained from Commission disclosure reports to solicit contributions. As discussed below, the Committee does not dispute the allegation, but we are unable to determine the scope of the violation from the available information. Accordingly, we recommend that the Commission find

1 reason to believe that the Committee violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 and
2 authorize an investigation to determine the scope of the violation.

3 **II. FACTS**

4 Trey Radel and Chauncey Goss were opponents in the 2012 Republican primary in
5 Florida's 19th Congressional District.¹ During the primary, the Goss campaign filed two
6 "salted" disclosure reports listing a contribution attributed to the pseudonym "Shirley A. Wood"
7 with the home address of its campaign manager, Sheryl Wooley.² Compl. at 1; *see* 2011 Year-
8 End Report at 27, 2012 July Quarterly at 15. In September 2012, during the general election,
9 Wooley received a fundraiser invitation from the Committee at her home address; the invitation
10 was addressed to the salted name. *Id.* The Goss campaign then filed this Complaint alleging that
11 the Committee violated the "sale and use" provisions by using contributor information contained
12 in FEC reports to solicit funds. Compl. at 1; *see* 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

13 The Committee's Response states that it was "shocked and surprised" to receive the
14 Complaint and that "[a]t no time did the Committee sanction, suggest or knowingly use any
15 information obtained from FEC reports for the purpose of soliciting contributions to the
16 Committee." Resp. at 1. The Committee asserts it conducted an internal investigation that
17 revealed that a campaign volunteer, David Stokes, was the source of the salted name.
18 Stokes reportedly gave the Committee five donor lists, which it added to a consolidated
19 fundraising list that was used for a mass mailing of the invitation received by Wooley. *See* Resp.

¹ Radel won the primary election on August 14, 2012, and went on to win the general election; he resigned his House seat on January 27, 2014.

² Section 438(a)(4) of the Act allows political committees to submit ten pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. *See also* 11 C.F.R. § 104.3(e). Pseudonyms used pursuant to 2 U.S.C. § 438(a)(4) are commonly called "salted" names.

1 Pusateri Aff. Ex. 2, ¶¶ 12, 15-16. Specifically, on September 8, 2012, Stokes sent Trey Radel an
2 email attaching three donor lists purportedly containing the names of donors in Lee County
3 (which fell in the 19th Congressional District) who had previously donated \$1,000 or more to
4 Republican candidates. *Id.*; see also Resp., Ex.1. Of the three Lee County donor lists, the
5 Committee provided only one with its response. This list included the salted name and 14 others.
6 Resp., Ex. 2. The Committee provided no specific information about the other two Lee County
7 lists. *Id.*, Ex. 1. In addition to the Lee County donor lists, the Committee states that Stokes
8 forwarded two more donor lists to the Committee: one including "high dollar donors in Collier
9 County" (which also fell within the 19th Congressional District) and one including doctors. See
10 Resp. Pusateri Aff. Ex. 2, ¶ 12. The Committee did not provide those two lists with its response,
11 nor did it provide any specific information about the lists. During the Committee's internal
12 investigation, Stokes reportedly admitted that "he had taken some of the names from the
13 published donor lists on the FEC website." *Id.* at ¶ 20. He further asserted that he did not know
14 that this practice was prohibited. *Id.*

15 The Committee asserts that it had no reason to believe that the lists provided by Stokes
16 were compiled improperly, and explains that no one questioned the lists because Stokes was "an
17 active volunteer in Republican politics in the area and a recent volunteer" for another primary
18 campaign. *Id.* at ¶¶ 9, 17-18. It states that it immediately contacted counsel upon receipt of the
19 Complaint and conducted an internal investigation. *Id.* at ¶¶ 17-18. Once the Committee
20 determined that Stokes was the source of the salted name, it informed him that his actions were
21 improper and requested that he sign an affidavit acknowledging his actions. *Id.* at ¶¶ 20-24.
22 Although Stokes was reportedly initially cooperative, he retained an attorney and ceased his
23 cooperation. *Id.* at ¶ 23. The Committee states that it has retained a professional expert to assist

1 in FEC reporting and fundraising, intends to send at least one representative of the Committee to
2 an FEC seminar, and is working with counsel to develop mandatory training for staff and
3 volunteers of future campaigns. *Id.* at ¶¶ 26-27.

4 III. LEGAL ANALYSIS

5 Political committees are required to file reports with the Commission identifying the
6 names and mailing addresses of contributors. 2 U.S.C. § 434(b)(2)(A) and (b)(3)(A); 11 C.F.R.
7 § 104.8(a). The Act provides that the Commission shall make reports and statements filed with it
8 available to the public for inspection and copying within 48 hours after receipt. 2 U.S.C.
9 § 438(a)(4). Any information copied from such reports or statements, however, "may not be sold
10 or used by any person for the purpose of soliciting contributions or for commercial purposes,"
11 other than using the name and address of a political committee to solicit contributions from that
12 political committee. *Id.*; see also 11 C.F.R. § 104.15(a). "Soliciting contributions" includes
13 soliciting any type of contribution or donation, such as political or charitable contributions.
14 11 C.F.R. § 104.15(b).

15 It is apparent that the Committee violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 by
16 using contributor information obtained from FEC disclosure reports filed by the Goss campaign
17 for the purpose of soliciting contributions. The Committee does not dispute the violation. It
18 requests, however, that the Commission exercise its discretion and dismiss the matter because
19 this was a single, inadvertent violation, and because the Committee has already conducted an
20 internal investigation, taken corrective action, and taken measures to ensure against future
21 violations. Resp. at 3.

22 In past enforcement matters involving the use of contributor information in FEC reports
23 to solicit contributions, the disposition has largely rested on the scope of the violation. For

1 example, in MUR 6290 (Pre-MUR 489) (Project Vote), the Commission found RTB where the
2 respondent used 7,853 contributor names and addresses from a filed FEC report to solicit
3 contributions. The solicitations ultimately yielded \$4,415 in contributions, and the Commission
4 entered into a conciliation agreement with the committee that required the committee to disgorge
5 the \$4,415 and pay a civil penalty of \$2,200. In MUR 6248 (ADR 537)/Pre-MUR 495 (ADR
6 539) (Citizens for an Open and Honest Government Supporting Dan Mielke for Congress), a
7 group sent 30-40 solicitations but received no contributions as a result. The Commission
8 consolidated the matter and *sua sponte* submission and sent it to ADR. In MUR 5990 (Citizens
9 for Matt Shaner), the respondent spent \$1,811 to send 984 solicitations, and the Commission
10 dismissed the violation with caution based on the *de minimis* amount in violation and the fact
11 that no funds were received as a result of the solicitations. In MUR 5469 (ADR 235) (Friends of
12 Greg Parke) Respondents acknowledged inadvertently including 30 names from a list of another
13 committee's contributors in a merged mailing database and agreed to send a representative to
14 FEC training and pay a civil penalty of \$500.

15 In this matter, we lack specific information about the scope of the violation that the
16 Commission typically relies on in determining the appropriate resolution for violations of section
17 438(a)(4). We have only one of the five lists that Stokes gave to the Committee. Of the fifteen
18 names on that list, the Committee's disclosure reports show that none made contributions to the
19 Committee after September 8, 2012 (the date Stokes first provided donor lists to the Committee).
20 See October 2012 Quarterly Report; 2012 Pre-General Report; 2012 Post-General Report.
21 However, the response acknowledges that the Committee added *all* of the names provided by
22 Stokes into one list that was used for the mass mailing fundraising letter, but provides no details
23 regarding the remaining four lists. The information in the response was also limited by Stokes's

1 failure to cooperate fully with the Committee during the internal investigation, *See Resp.* at 2-3.

2 As a result, we are unable to determine how many names Stokes provided to the Committee, how
3 many of those names came from FEC disclosure reports, and how many contributions, if any, the
4 Committee received from the individuals whose names were taken from FEC reports, and in
5 what amount. Without this information, we are not prepared to recommend a potential resolution
6 for this matter, and instead recommend that the Commission authorize us to investigate the scope
7 of this violation of the Act.

8 Accordingly, we recommend that the Commission find reason to believe that the
9 Committee violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 and authorize an investigation
10 to determine the scope of the violation.

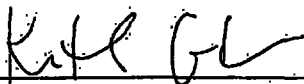
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IV. RECOMMENDATIONS

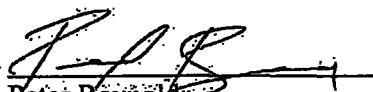
1. Find reason to believe Friends of Trey Radel, Inc., and Barbara Bisnette as treasurer violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.
2. Authorize the use of compulsory process in this matter.
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letters.

Daniel A. Petalas
Associate General Counsel for Enforcement

2-11-14
Date


Kathleen Guith
Deputy Associate General Counsel for
Enforcement


William Powers
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Peter Reynolds
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